

section in the United States. In addition, all provisions of 10 U.S.C. 1076a shall remain in effect.

[53 FR 2020, Jan. 26, 1988, as amended at 55 FR 43342, Nov. 16, 1990; 60 FR 55451, Nov. 1, 1995; 62 FR 39941, July 25, 1997]

§ 199.14 Provider reimbursement methods.

(a) *Hospitals.* The CHAMPUS-determined allowable cost for reimbursement of a hospital shall be determined on the basis of one of the following methodologies.

(1) *CHAMPUS Diagnosis Related Group (DRG)-based payment system.* Under the CHAMPUS DRG-based payment system, payment for the operating costs of inpatient hospital services furnished by hospitals subject to the system is made on the basis of prospectively-determined rates and applied on a per discharge basis using DRGs. Payments under this system will include a differentiation for urban (using large urban and other urban areas) and rural hospitals and an adjustment for area wage differences and indirect medical education costs. Additional payments will be made for capital costs, direct medical education costs, and outlier cases.

(i) *General.—(A) DRGs used.* The CHAMPUS DRG-based payment system will use the same DRGs used in the most recently available grouper for the Medicare Prospective Payment System, except as necessary to recognize distinct characteristics of CHAMPUS beneficiaries and as described in instructions issued by the Director, OCHAMPUS.

(B) *Assignment of discharges to DRGs.*

(1) The classification of a particular discharge shall be based on the patient's age, sex, principal diagnosis (that is, the diagnosis established, after study, to be chiefly responsible for causing the patient's admission to the hospital), secondary diagnoses, procedures performed and discharge status. In addition, for neonatal cases (other than normal newborns) the classification shall also account for birthweight, surgery and the presence of multiple, major and other neonatal problems, and shall incorporate annual updates to these classification features.

(2) Each discharge shall be assigned to only one DRG regardless of the number of conditions treated or services furnished during the patient's stay.

(C) *Basis of payment.—(1) Hospital billing.* Under the CHAMPUS DRG-based payment system, hospitals are required to submit claims (including itemized charges) in accordance with § 199.7(b). The CHAMPUS fiscal intermediary will assign the appropriate DRG to the claim based on the information contained in the claim. Any request from a hospital for reclassification of a claim to a higher weighted DRG must be submitted, within 60 days from the date of the initial payment, in a manner prescribed by the Director, OCHAMPUS.

(2) *Payment on a per discharge basis.* Under the CHAMPUS DRG-based payment system, hospitals are paid a predetermined amount per discharge for inpatient hospital services furnished to CHAMPUS beneficiaries.

(3) *Claims priced as of date of admission.* Except for interim claims submitted for qualifying outlier cases, all claims reimbursed under the CHAMPUS DRG-based payment system are to be priced as of the date of admission, regardless of when the claim is submitted.

(4) *Payment in full.* The DRG-based amount paid for inpatient hospital services is the total CHAMPUS payment for the inpatient operating costs (as described in paragraph (a)(1)(i)(C)(5) of this section) incurred in furnishing services covered by the CHAMPUS. The full prospective payment amount is payable for each stay during which there is at least one covered day of care, except as provided in paragraph (a)(1)(iii)(E)(1)(i)(A) of this section.

(5) *Inpatient operating costs.* The CHAMPUS DRG-based payment system provides a payment amount for inpatient operating costs, including:

(i) Operating costs for routine services, such as the costs of room, board, and routine nursing services;

(ii) Operating costs for ancillary services, such as hospital radiology and laboratory services (other than physicians' services) furnished to hospital inpatients;

(iii) Special care unit operating costs; and

(iv) Malpractice insurance costs related to services furnished to inpatients.

(θ) *Discharges and transfers.*

(i) *Discharges.* A hospital inpatient is discharged when:

(A) The patient is formally released from the hospital (release of the patient to another hospital as described in paragraph (a)(1)(i)(C)(θ)(ii) of this section, or a leave of absence from the hospital, will not be recognized as a discharge for the purpose of determining payment under the CHAMPUS DRG-based payment system);

(B) The patient dies in the hospital; or

(C) The patient is transferred from the care of a hospital included under the CHAMPUS DRG-based payment system to a hospital or unit that is excluded from the prospective payment system.

(ii) *Transfers.* Except as provided under paragraph (a)(1)(i)(C)(θ)(i) of this section, a discharge of a hospital inpatient is not counted for purposes of the CHAMPUS DRG-based payment system when the patient is transferred:

(A) From one inpatient area or unit of the hospital to another area or unit of the same hospital;

(B) From the care of a hospital included under the CHAMPUS DRG-based payment system to the care of another hospital paid under this system;

(C) From the care of a hospital included under the CHAMPUS DRG-based payment system to the care of another hospital that is excluded from the CHAMPUS DRG-based payment system because of participation in a statewide cost control program which is exempt from the CHAMPUS DRG-based payment system under paragraph (a)(1)(ii)(A) of this section; or

(D) From the care of a hospital included under the CHAMPUS DRG-based payment system to the care of a uniformed services treatment facility.

(iii) *Payment in full to the discharging hospital.* The hospital discharging an inpatient shall be paid in full under the CHAMPUS DRG-based payment system.

(iv) *Payment to a hospital transferring an inpatient to another hospital.* If a hospital subject to the CHAMPUS DRG-

based payment system transfers an inpatient to another such hospital, the transferring hospital shall be paid a per diem rate (except that in neonatal cases, other than normal newborns, the hospital will be paid at 125 percent of that per diem rate), as determined under instructions issued by OCHAMPUS, for each day of the patient's stay in that hospital, not to exceed the DRG-based payment that would have been paid if the patient had been discharged to another setting. However, if a discharge is classified into DRG No. 456 (Burns, transferred to another acute care facility) or DRG 601 (neonate, transferred less than or equal to 4 days old), the transferring hospital shall be paid in full.

(v) *Additional payments to transferring hospitals.* A transferring hospital may qualify for an additional payment for extraordinary cases that meet the criteria for long-stay or cost outliers.

(D) *DRG system updates.* The CHAMPUS DRG-based payment system is modeled on the Medicare Prospective Payment System (PPS) and uses annually updated items and numbers from the Medicare PPS as provided for in this part and in instructions issued by the Director, OCHAMPUS. The effective date of these items and numbers shall correspond to that under the Medicare PPS except where distinctions are made in this part.

(ii) *Applicability of the DRG system.*

(A) *Areas affected.* The CHAMPUS DRG-based payment system shall apply to hospitals' services in the fifty states, the District of Columbia, and Puerto Rico, except that any state which has implemented a separate DRG-based payment system or similar payment system in order to control costs and is exempt from the Medicare Prospective Payment System may be exempt from the CHAMPUS DRG-based payment system if it requests exemption in writing, and provided payment under such system does not exceed payment which would otherwise be made under the CHAMPUS DRG-based payment system.

(B) *Services subject to the DRG-based payment system.* All normally covered inpatient hospital services furnished to CHAMPUS beneficiaries by hospitals

are subject to the CHAMPUS DRG-based payment system.

(C) *Services exempt from the DRG-based payment system.* The following hospital services, even when provided in a hospital subject to the CHAMPUS DRG-based payment system, are exempt from the CHAMPUS DRG-based payment system. The services in paragraphs (a)(1)(ii)(C)(1) through (a)(1)(ii)(C)(4) and (a)(1)(ii)(C)(7) through (a)(1)(ii)(C)(9) of this section shall be reimbursed under the procedures in paragraph (a)(3) of this section, and the services in paragraphs (a)(1)(ii)(C)(5) and (a)(1)(ii)(C)(6) of this section shall be reimbursed under the procedures in paragraph (g) of this section.

(1) Services provided by hospitals exempt from the DRG-based payment system.

(2) All services related to kidney acquisition by Rental Transplantation Centers.

(3) All services related to a heart transplantation which would otherwise be paid under DRG 103.

(4) All services related to liver transplantation when the transplant is performed in a CHAMPUS-authorized liver transplantation center.

(5) All professional services provided by hospital-based physicians.

(6) All services provided by nurse anesthetists.

(7) All services related to discharges involving pediatric bone marrow transplants (patient under 18 at admission).

(8) All services related to discharges involving children who have been determined to be HIV seropositive (patient under 18 at admission).

(9) All services related to discharges involving pediatric cystic fibrosis (patient under 18 at admission).

(10) For admissions occurring on or after October 1, 1990, the costs of blood clotting factor for hemophilia inpatients. An additional payment shall be made to a hospital for each unit of blood clotting factor furnished to a CHAMPUS inpatient who is hemophiliac in accordance with the amounts established under the Medicare Prospective Payment System (42 CFR 412.115).

(D) *Hospitals subject to the CHAMPUS DRG-based payment system.* All hos-

pitals within the fifty states, the District of Columbia, and Puerto Rico which are certified to provide services to CHAMPUS beneficiaries are subject to the DRG-based payment system except for the following hospitals or hospital units which are exempt.

(1) *Psychiatric hospitals.* A psychiatric hospital which is exempt from the Medicare Prospective Payment System is also exempt from the CHAMPUS DRG-based payment system. In order for a psychiatric hospital which does not participate in Medicare to be exempt from the CHAMPUS DRG-based payment system, it must meet the same criteria (as determined by the Director, OCHAMPUS, or a designee) as required for exemption from the Medicare Prospective Payment System as contained in 42 CFR 412.23.

(2) *Rehabilitation hospitals.* A rehabilitation hospital which is exempt from the Medicare Prospective Payment System is also exempt from the CHAMPUS DRG-based payment system. In order for a rehabilitation hospital which does not participate in Medicare to be exempt from the CHAMPUS DRG-based payment system, it must meet the same criteria (as determined by the Director, OCHAMPUS, or a designee) as required for exemption from the Medicare Prospective Payment System as contained in 42 CFR 412.23.

(3) *Psychiatric and rehabilitation units (distinct parts).* A psychiatric or rehabilitation unit which is exempt from the Medicare prospective payment system is also exempt from the CHAMPUS DRG-based payment system. In order for a distinct unit which does not participate in Medicare to be exempt from the CHAMPUS DRG-based payment system, it must meet the same criteria (as determined by the Director, OCHAMPUS, or a designee) as required for exemption from the Medicare Prospective Payment System as contained in 42 CFR 412.23.

(4) *Long-term hospitals.* A long-term hospital which is exempt from the Medicare prospective payment system is also exempt from the CHAMPUS DRG-based payment system. In order for a long-term hospital which does not participate in Medicare to be exempt

from the CHAMPUS DRG-based payment system, it must have an average length of inpatient stay greater than 25 days:

(i) As computed by dividing the number of total inpatient days (less leave or pass days) by the total number of discharges for the hospital's most recent fiscal year; or

(ii) As computed by the same method for the immediately preceding six-month period, if a change in the hospital's average length of stay is indicated.

(5) *Sole community hospitals.* Any hospital which has qualified for special treatment under the Medicare prospective payment system as a sole community hospital and has not given up that classification is exempt from the CHAMPUS DRG-based payment system. (See subpart G of 42 CFR part 412.)

(6) *Christian Science sanitoriums.* All Christian Science sanitoriums (as defined in paragraph (b)(4)(viii) of § 199.6) are exempt from the CHAMPUS DRG-based payment system.

(7) *Cancer hospitals.* Any hospital which qualifies as a cancer hospital under the Medicare standards and has elected to be exempt from the Medicare prospective payment system is exempt from the CHAMPUS DRG-based payment system. (See 42 CFR 412.94.)

(8) *Hospitals outside the 50 states, the District of Columbia, and Puerto Rico.* A hospital is excluded from the CHAMPUS DRG-based payment system if it is not located in one of the fifty States, the District of Columbia, or Puerto Rico.

(E) *Hospitals which do not participate in Medicare.* It is not required that a hospital be a Medicare-participating provider in order to be an authorized CHAMPUS provider. However, any hospital which is subject to the CHAMPUS DRG-based payment system and which otherwise meets CHAMPUS require-

ments but which is not a Medicare-participating provider (having completed a form HCFA-1514, Hospital Request for Certification in the Medicare/Medicaid Program and a form HCFA-1561, Health Insurance Benefit Agreement) must complete a participation agreement with OCHAMPUS. By completing the participation agreement, the hospital agrees to participate on all CHAMPUS inpatient claims and to accept the CHAMPUS-determined allowable amount as payment in full for these claims. Any hospital which does not participate in Medicare and does not complete a participation agreement with OCHAMPUS will not be authorized to provide services to CHAMPUS beneficiaries.

(F) *Substance Use Disorder Rehabilitation facilities.* With admissions on or after July 1, 1995, substance use disorder rehabilitation facilities, authorized under § 199.6(b)(4)(xiv), are subject to the DRG-based payment system.

(iii) *Determination of payment amounts.* The actual payment for an individual claim under the CHAMPUS DRG-based payment system is calculated by multiplying the appropriate adjusted standardized amount (adjusted to account for area wage differences using the wage indexes used in the Medicare program) by a weighting factor specific to each DRG.

(A) *Calculation of DRG weights.*

(1) *Grouping of charges.* All discharge records in the database shall be grouped by DRG.

(2) *Remove DRGs 469 and 470.* Records from DRGs 469 and 470 shall be removed from the database.

(3) *Indirect medical education standardization.* To standardize the charges for the cost effects of indirect medical education factors, each teaching hospital's charges will be divided by 1.0 plus the following ratio on a hospital-specific basis:

$$1.43 \times \left[\left(1.0 + \frac{\text{number of interns + residents}}{\text{number of beds}} \right) .5795 - 1.0 \right]$$

(4) *Wage level standardization.* To standardize the charge records for area wage differences, each charge record will be divided into labor-related and

nonlabor-related portions, and the labor-related portion shall be divided by the most recently available Medicare wage index for the area. The labor-related and nonlabor-related portions will then be added together.

(5) *Elimination of statistical outliers.* All unusually high or low charges shall be removed from the database.

(6) *Calculation of DRG average charge.* After the standardization for indirect medical education, and area wage differences, an average charge for each DRG shall be computed by summing charges in a DRG and dividing that sum by the number of records in the DRG.

(7) *Calculation of national average charge per discharge.* A national average charge per discharge shall be calculated by summing all charges and dividing that sum by the total number of records from all DRG categories.

(8) *DRG relative weights.* DRG relative weights shall be calculated for each DRG category by dividing each DRG average charge by the national average charge.

(B) *Empty and low-volume DRGs.* The Medicare weight shall be used for any DRG with less than ten (10) occurrences in the CHAMPUS database. The short-stay thresholds shall be set at one day for these DRGs and the long-stay thresholds shall be set at the FY 87 Medicare thresholds.

(C) *Updating DRG weights.* The CHAMPUS DRG weights shall be updated or adjusted as follows:

(1) DRG weights shall be recalculated annually using CHAMPUS charge data and the methodology described in paragraph (a)(1)(iii)(A) of this section.

(2) When a new DRG is created, CHAMPUS will, if practical, calculate a weight for it using an appropriate charge sample (if available) and the methodology described in paragraph (a)(1)(iii)(A) of this section.

(3) In the case of any other change under Medicare to an existing DRG weight (such as in connection with technology changes), CHAMPUS shall adjust its weight for that DRG in a manner comparable to the change made by Medicare.

(D) *Calculation of the adjusted standardized amounts.* The following procedures shall be followed in calculating the CHAMPUS adjusted standardized amounts.

(1) *Differentiate large urban, other urban, and rural charges.* All charges in the database shall be sorted into large urban, other urban, and rural groups (using the same definitions for these categories used in the Medicare program). The following procedures will be applied to each group.

(2) *Indirect medical education standardization.* To standardize the charges for the cost effects of indirect medical education factors, each teaching hospital's charges will be divided by 1.0 plus the following ratio on a hospital-specific basis:

$$1.43 \times \left[\left(1.0 + \frac{\text{number of interns + residents}}{\text{number of beds}} \right) .5795 - 1.0 \right]$$

(3) *Wage level standardization.* To standardize the charge records for area wage differences, each charge record will be divided into labor-related and nonlabor-related portions, and the labor-related portion shall be divided by the most recently available Medicare wage index for the area. The labor-related and nonlabor-related portions will then be added together.

(4) *Apply the cost to charge ratio.* Each charge is to be reduced to a representa-

tive cost by using the Medicare cost to charge ratio. This amount shall be increased by 1 percentage point in order to reimburse hospitals for bad debt expenses attributable to CHAMPUS beneficiaries.

(5) *Preliminary base year standardized amount.* A preliminary base year standardized amount shall be calculated by summing all sts in the database applicable to the large urban, other urban, or rural group and dividing by the total

number of discharges in the respective group.

(6) *Update for inflation.* The preliminary base year standardized amounts shall be updated using an annual update factor equal to 1.07 to produce fiscal year 1988 preliminary standardized amounts. Therefore, any development of a new standardized amount will use an inflation factor equal to the hospital market basket index used by the Health Care Financing Administration in their Prospective Payment System.

(7) The preliminary standardized amounts, updated for inflation, shall be divided by a system standardization factor so that total DRG outlays, given the database distribution across hospitals and diagnosis, are equal to the total charges reduced to costs.

(8) *Labor and nonlabor portions of the adjusted standardized amounts.* The adjusted standardized amounts shall be divided into labor and nonlabor portions in accordance with the Medicare division of labor and nonlabor portions.

(E) *Adjustments to the DRG-based payments amounts.* The following adjustments to the DRG-based amounts (the weight multiplied by the adjusted standardized amount) will be made.

(1) *Outliers.* The DRG-based payment to a hospital shall be adjusted for atypical cases. These outliers are those cases that have either an unusually short length-of-stay or extremely long length-of-stay or that involve extraordinarily high costs when compared to most discharges classified in the same DRG. Cases which qualify as both a length-of-stay outlier and a cost outlier shall be paid at the rate which results in the greater payment.

(i) *Length-of-stay outliers.* Length-of-stay outliers shall be identified and paid by the fiscal intermediary when the claims are processed.

(A) *Short-stay outliers.* Any discharge with a length-of-stay (LOS) less than 1.94 standard deviations from the DRG's geometric LOS shall be classified as a short-stay outlier. Short-stay outliers shall be reimbursed at 200 percent of the per diem rate for the DRG for each covered day of the hospital stay, not to exceed the DRG amount. The per diem rate shall equal the DRG amount divided by the geometric mean length-of-stay for the DRG.

(B) *Long-stay outliers.* Any discharge (except for neonatal services and services in children's hospitals) which has a length-of-stay (LOS) exceeding a threshold established in accordance with the criteria used for the Medicare Prospective Payment System as contained in 42 CFR 412.82 shall be classified as a long-stay outlier. Any discharge for neonatal services or for services in a children's hospital which has a LOS exceeding the lesser of 1.94 standard deviations or 17 days from the DRG's geometric mean LOS also shall be classified as a long-stay outlier. Long-stay outliers shall be reimbursed the DRG-based amount plus a percentage (as established for the Medicare Prospective Payment System) of the per diem rate for the DRG for each covered day of care beyond the long-stay outlier cutoff. The per diem rate shall equal the DRG amount divided by the geometric mean LOS for the DRG.

(ii) *Cost outliers.* Additional payment for cost outliers shall be made only upon request by the hospital.

(A) *Cost outliers except those in children's hospitals or for neonatal services.* Any discharge which has standardized costs that exceed a threshold established in accordance with the criteria used for the Medicare Prospective Payment System as contained in 42 CFR 412.84 shall qualify as a cost outlier. The standardized costs shall be calculated by multiplying the total charges by the factor described in § 199.14(a)(1)(iii)(D)(4) and adjusting this amount for indirect medical education costs. Cost outliers shall be reimbursed the DRG-based amount plus a percentage (as established for the Medicare Prospective Payment System) of all costs exceeding the threshold.

(B) *Cost outliers in children's hospitals and for neonatal services.* Any discharge for services in a children's hospital or for neonatal services which has standardized costs that exceed a threshold of the greater of two times the DRG-based amount or \$13,500 shall qualify as a cost outlier. The standardized costs shall be calculated by multiplying the total charges by the factor described in § 199.14(a)(1)(iii)(D)(4) (adjusted to include average capital and direct medical education costs) and adjusting this amount for indirect medical education

costs. Cost outliers for services in children's hospitals and for neonatal services shall be reimbursed the DRG-based amount plus a percentage (as established for the Medicare Prospective Payment System) of all costs exceeding the threshold.

(C) *Cost outliers for burn cases.* All cost outliers for DRGs related to burn cases shall be reimbursed the DRG-based amount plus a percentage (as established for the Medicare Prospective Payment System) of all costs exceeding the threshold. The standardized costs and thresholds for these cases shall be calculated in accordance with § 199.14(a)(1)(iii)(E)(I)(i)(A) and § 199.14(a)(1)(iii)(E)(I)(i)(B).

(2) *Wage adjustment.* CHAMPUS will adjust the labor portion of the standardized amounts according to the hospital's area wage index.

(3) *Indirect medical education adjustment.* The wage adjusted DRG payment will also be multiplied by 1.0 plus the hospital's indirect medical education ratio.

(4) *Children's hospital differential.* With respect to claims from children's hospitals, the appropriate adjusted standardized amount shall also be adjusted by a children's hospital differential.

(i) *Qualifying children's hospitals.* Hospitals qualifying for the children's hospital differential are hospitals that are exempt from the Medicare Prospective Payment System, or, in the case of hospitals that do not participate in Medicare, that meet the same criteria (as determined by the Director, OCHAMPUS, or a designee) as required for exemption from the Medicare Prospective Payment System as contained in 42 CFR 412.23.

(ii) *Calculation of differential.* The differential shall be equal to the difference between a specially calculated children's hospital adjusted standardized amount and the adjusted standardized amount for fiscal year 1988. The specially calculated children's hospital adjusted standardized amount shall be calculated in the same manner as set forth in § 199.14(a)(1)(iii)(D), except that:

(A) The base period shall be fiscal year 1988 and shall represent total esti-

mated charges for discharges that occurred during fiscal year 1988.

(B) No cost to charge ratio shall be applied.

(C) Capital costs and direct medical education costs will be included in the calculation.

(D) The factor used to update the database for inflation to produce the fiscal year 1988 base period amount shall be the applicable Medicare inpatient hospital market basket rate.

(iii) *Transition rule.* Until March 1, 1992, separate differentials shall be used for each higher volume children's hospital (individually) and for all other children's hospitals (in the aggregate). For this purpose, a higher volume hospital is a hospital that had 50 or more CHAMPUS discharges in fiscal year 1988.

(iv) *Hold harmless provision.* At such time as the weights initially assigned to neonatal DRGs are recalibrated based on sufficient volume of CHAMPUS claims records, children's hospital differentials shall be recalculated and appropriate retrospective and prospective adjustments shall be made. To the extent practicable, the recalculation shall also include reestimated values of other factors (including but not limited to direct education and capital costs and indirect education factors) for which more accurate data became available.

(v) *No update for inflation.* The children's hospital differential, calculated (and later recalculated under the hold harmless provision) for the base period of fiscal year 1988, shall not be updated for subsequent fiscal years.

(vi) *Administrative corrections.* In connection with determinations pursuant to paragraph (a)(1)(iii)(E)(4)(iii) of this section, any children's hospital that believes OCHAMPUS erroneously failed to classify the hospital as a high volume hospital or incorrectly calculated (in the case of a high volume hospital) the hospital's differential may obtain administrative corrections by submitting appropriate documentation to the Director, OCHAMPUS (or a designee).

(F) *Updating the adjusted standardized amounts.* Beginning in FY 1989, the adjusted standardized amounts will be updated by the Medicare annual update

factor, unless the adjusted standardized amounts are recalculated.

(G) *Annual cost pass-throughs.*

(I) *Capital costs.* When requested in writing by a hospital, CHAMPUS shall reimburse the hospital its share of actual capital costs as reported annually to the CHAMPUS fiscal intermediary. Payment for capital costs shall be made annually based on the ratio of CHAMPUS inpatient days for those beneficiaries subject to the CHAMPUS DRG-based payment system to total inpatient days applied to the hospital's total allowable capital costs. Reductions in payments for capital costs which are required under Medicare shall also be applied to payments for capital costs under CHAMPUS.

(i) *Costs included as capital costs.* Allowable capital costs are those specified in Medicare Regulation § 413.130, as modified by § 412.72.

(ii) *Services, facilities, or supplies provided by supplying organizations.* If services, facilities, or supplies are provided to the hospital by a supplying organization related to the hospital within the meaning of Medicare Regulation § 413.17, then the hospital must include in its capital-related costs, the capital-related costs of the supplying organization. However, if the supplying organization is not related to the provider within the meaning of § 413.17, no part of the change to the provider may be considered a capital-related cost unless the services, facilities, or supplies are capital-related in nature and:

(A) The capital-related equipment is leased or rented by the provider;

(B) The capital-related equipment is located on the provider's premises; and

(C) The capital-related portion of the charge is separately specified in the charge to the provider.

(2) *Direct medical education costs.* When requested in writing by a hospital, CHAMPUS shall reimburse the hospital its actual direct medical education costs as reported annually to the CHAMPUS fiscal intermediary. Such teaching costs must be for a teaching program approved under Medicare Regulation § 413.85. Payment for direct medical education costs shall be made annually based on the ratio of CHAMPUS inpatient days for those beneficiaries subject to the CHAMPUS

DRG-based payment system to total inpatient days applied to the hospital's total allowable direct medical education costs. Allowable direct medical education costs are those specified in Medicare Regulation § 413.85.

(3) *Information necessary for payment of capital and direct medical education costs.* All hospitals subject to the CHAMPUS DRG-based payment system, except for children's hospitals, may be reimbursed for allowed capital and direct medical education costs by submitting a request to the CHAMPUS contractor. Such request shall cover the one-year period corresponding to the hospital's Medicare cost-reporting period. The first such request may cover a period of less than a full year—from the effective date of the CHAMPUS DRG-based payment system to the end of the hospital's Medicare cost-reporting period. All costs reported to the CHAMPUS contractor must correspond to the costs reported on the hospital's Medicare cost report. In the case of children's hospitals that request reimbursement under this clause for capital and/or direct medical education costs, the hospital must submit appropriate base period cost information, as determined by the Director, OCHAMPUS (or designee). (If these costs change as a result of a subsequent audit by Medicare, the revised costs are to be reported to the hospital's CHAMPUS contractor within 30 days of the date the hospital is notified of the change.) The request must be signed by the hospital official responsible for verifying the amounts and shall contain the following information.

(i) The hospital's name.

(ii) The hospital's address.

(iii) The hospital's CHAMPUS provider number.

(iv) The hospital's Medicare provider number.

(v) The period covered—this must correspond to the hospital's Medicare cost-reporting period.

(vi) Total inpatient days provided to all patients in units subject to DRG-based payment.

(vii) Total allowed CHAMPUS inpatient days provided in units subject to DRG-based payment.

(viii) Total allowable capital costs.

(ix) Total allowable direct medical education costs.

(x) Total full-time equivalents for:

(A) Residents.

(B) Interns.

(xi) Total inpatient beds as of the end of the cost-reporting period. If this has changed during the reporting period, an explanation of the change must be provided.

(xii) Title of official signing the report.

(xiii) Reporting date.

(xiv) The report shall contain a certification statement that any changes to the items in paragraphs (a)(1)(iii)(G)(3)(vi), (vii), (viii), (ix), or (x), which are a result of an audit of the hospital's Medicare cost-report, shall be reported to CHAMPUS within thirty (30) days of the date the hospital is notified of the change.

(2) *CHAMPUS mental health per diem payment system.* The CHAMPUS mental health per diem payment system shall be used to reimburse for inpatient mental health hospital care in specialty psychiatric hospitals and units. Payment is made on the basis of prospectively determined rates and paid on a per diem basis. The system uses two sets of per diems. One set of per diems applies to hospitals and units that have a relatively higher number of CHAMPUS discharges. For these hospitals and units, the system uses hospital-specific per diem rates. The other set of per diems applies to hospitals and units with a relatively lower number of CHAMPUS discharges. For these hospitals and units, the system uses regional per diems, and further provides for adjustments for area wage differences and indirect medical education costs and additional pass-through payments for direct medical education costs.

(i) *Applicability of the mental health per diem payment system.*

(A) *Hospitals and units covered.* The CHAMPUS mental health per diem payment system applies to services covered (see paragraph (a)(2)(i)(B) of this section) that are provided in Medicare prospective payment system (PPS) exempt psychiatric specialty hospitals and all Medicare PPS exempt psychiatric specialty units of other hospitals. In addition, any psychiatric

hospital that does not participate in Medicare, or any other hospital that has a psychiatric specialty unit that has not been so designated for exemption from the Medicare prospective payment system because the hospital does not participate in Medicare, may be designated as a psychiatric hospital or psychiatric specialty unit for purposes of the CHAMPUS mental health per diem payment system upon demonstrating that it meets the same criteria (as determined by the Director, OCHAMPUS) as required for the Medicare exemption. The CHAMPUS mental health per diem payment system does not apply to mental health services provided in other hospitals.

(B) *Services covered.* Unless specifically exempted, all covered hospitals' and units' inpatient claims which are classified into a mental health DRG (DRG categories 425-432, but not DRG 424) or an alcohol/drug abuse DRG (DRG categories 433-437) shall be subject to the mental health per diem payment system.

(ii) *Hospital-specific per diems for higher volume hospitals and units.* This paragraph describes the per diem payment amounts for hospitals and units with a higher volume of CHAMPUS discharges.

(A)(1) *Per diem amount.* A hospital-specific per diem amount shall be calculated for each hospital and unit with a higher volume of CHAMPUS discharges. The base period per diem amount shall be equal to the hospital's average daily charge in the base period. The base period amount, however, may not exceed the cap described in paragraph (a)(2)(ii)(B) of this section. The base period amount shall be updated in accordance with paragraph (a)(2)(iv) of this section.

(2) In states that have implemented a payment system in connection with which hospitals in that state have been exempted from the CHAMPUS DRG-based payment system pursuant to paragraph (a)(1)(ii)(A) of this section, psychiatric hospitals and units may have per diem amounts established based on the payment system applicable to such hospitals and units in the state. The per diem amount, however, may not exceed the cap amount applicable to other higher volume hospitals.

(B) *Cap—(1)* As it affects payment for care provided to patients prior to April 6, 1995, the base period per diem amount may not exceed the 80th percentile of the average daily charge weighted for all discharges throughout the United States from all higher volume hospitals.

(2) Applicable to payments for care provided to patients on or after April 6, 1996, the base period per diem amount may not exceed the 70th percentile of the average daily charge weighted for all discharges throughout the United States from all higher volume hospitals. For this purpose, base year charges shall be deemed to be charges during the period of July 1, 1991 to June 30, 1992, adjusted to correspond to base year (FY 1988) charges by the percentage change in average daily charges for all higher volume hospitals and units between the period of July 1, 1991 to June 30, 1992 and the base year.

(C) *Review of per diem.* Any hospital or unit which believes OCHAMPUS calculated a hospital-specific per diem which differs by more than \$5.00 from that calculated by the hospital or unit may apply to the Director, OCHAMPUS, or a designee, for a recalculation. The burden of proof shall be on the hospital.

(iii) *Regional per diems for lower volume hospitals and units.* This paragraph describes the per diem amounts for hospitals and units with a lower volume of CHAMPUS discharges.

(A) *Per diem amounts.* Hospitals and units with a lower volume of CHAMPUS patients shall be paid on the basis of a regional per diem amount, adjusted for area wages and indirect medical education. Base period regional per diems shall be calculated based upon all CHAMPUS lower volume hospitals' claims paid during the base period. Each regional per diem amount shall be the quotient of all covered charges divided by all covered days of care, reported on all CHAMPUS claims from lower volume hospitals in the region paid during the base period, after having standardized for indirect medical education costs and area wage indexes and subtracted direct medical education costs. Regional per diem amounts are adjusted in accordance with paragraph (a)(2)(iii)(C) of this sec-

tion. Additional pass-through payments to lower volume hospitals are made in accordance with paragraph (a)(2)(iii)(D) of this section. The regions shall be the same as the Federal census regions.

(B) *Review of per diem amount.* Any hospital that believes the regional per diem amount applicable to that hospital has been erroneously calculated by OCHAMPUS by more than \$5.00 may submit to the Director, OCHAMPUS, or a designee, evidence supporting a different regional per diem. The burden of proof shall be on the hospital.

(C) *Adjustments to regional per diems.* Two adjustments shall be made to the regional per diem rates.

(1) *Area wage index.* The same area wage indexes used for the CHAMPUS DRG-based payment system (see paragraph (a)(1)(iii)(E)(2) of this section) shall be applied to the wage portion of the applicable regional per diem rate for each day of the admission. The wage portion shall be the same as that used for the CHAMPUS DRG-based payment system.

(2) *Indirect medical education.* The indirect medical education adjustment factors shall be calculated for teaching hospitals in the same manner as is used in the CHAMPUS DRG-based payment system (see paragraph (a)(1)(iii)(E)(3) of this section) and applied to the applicable regional per diem rate for each day of the admission.

(D) *Annual cost pass-through for direct medical education.* In addition to payments made to lower volume hospitals under paragraph (a)(2)(iii) of this section, CHAMPUS shall annually reimburse hospitals for actual direct medical education costs associated with services to CHAMPUS beneficiaries. This reimbursement shall be done pursuant to the same procedures as are applicable to the CHAMPUS DRG-based payment system (see paragraph (a)(1)(iii)(G) of this section).

(iv) *Base period and update factors.*

(A) *Base period.* The base period for calculating the hospital-specific and regional per diems, as described in paragraphs (a)(2)(ii) and (a)(2)(iii) of this section, is Federal fiscal year 1988. Base period calculations shall be based on actual claims paid during the period July 1, 1987 through May 31, 1988,

trended forward to represent the 12-month period ending September 30, 1988 on the basis of the Medicare inpatient hospital market basket rate.

(B) *Alternative hospital-specific data base.* Upon application of a higher volume hospital or unit to the Director, OCHAMPUS, or a designee, the hospital or unit may have its hospital-specific base period calculations based on claims with a date of discharge (rather than date of payment) between July 1, 1987 through May 31, 1988 if it has generally experienced unusual delays in claims payments and if the use of such an alternative data base would result in a difference in the per diem amount of at least \$5.00. For this purpose, the unusual delays means that the hospital's or unit's average time period between date of discharge and date of payment is more than two standard deviations longer than the national average.

(C) *Update factors—(1)* The hospital-specific per diems and the regional per diems calculated for the base period pursuant to paragraphs (a)(2)(ii) of this section shall remain in effect for federal fiscal year 1989; there will be no additional update for fiscal year 1989.

(2) Except as provided in paragraph (a)(2)(iv)(C)(3) of this section, for subsequent federal fiscal years, each per diem shall be updated by the Medicare update factor for hospitals and units exempt from the Medicare prospective payment system.

(3) As an exception to the update required by paragraph (a)(2)(iv)(C)(2) of this section, all per diems in effect at the end of fiscal year 1995 shall remain in effect, with no additional update, throughout fiscal years 1996 and 1997. For fiscal year 1998 and thereafter, the per diems in effect at the end of fiscal year 1997 will be updated in accordance with paragraph (a)(2)(iv)(C)(2).

(4) Hospitals and units with hospital-specific rates will be notified of their respective rates prior to the beginning of each Federal fiscal year. New hospitals shall be notified at such time as the hospital rate is determined. The actual amounts of each regional per diem that will apply in any Federal fiscal year shall be published in the FEDERAL REGISTER at approximately the start of that fiscal year.

(v) *Higher volume hospitals.* This paragraph describes the classification of and other provisions pertinent to hospitals with a higher volume of CHAMPUS patients.

(A) *In general.* Any hospital or unit that had an annual rate of 25 or more CHAMPUS discharges of CHAMPUS patients during the period July 1, 1987 through May 31, 1988 shall be considered a higher volume hospital has 25 or more CHAMPUS discharges, that hospital shall be considered to be a higher volume hospital during Federal fiscal year 1989 and all subsequent fiscal years. All other hospitals and units covered by the CHAMPUS mental health per diem payment system shall be considered lower volume hospitals.

(B) *Hospitals that subsequently become higher volume hospitals.* In any Federal fiscal year in which a hospital, including a new hospital (see paragraph (a)(2)(v)(C) of this section), not previously classified as a higher volume hospital has 25 or more CHAMPUS discharges, that hospital shall be considered to be a higher volume hospital during the next Federal fiscal year and all subsequent fiscal years. The hospital specific per diem amount shall be calculated in accordance with the provisions of paragraph (a)(2)(ii) of this section, except that the base period average daily charge shall be deemed to be the hospital's average daily charge in the year in which the hospital had 25 or more discharges, adjusted by the percentage change in average daily charges for all higher volume hospitals and units between the year in which the hospital had 25 or more CHAMPUS discharges and the base period. The base period amount, however, may not exceed the cap described in paragraph (a)(2)(ii)(B) of this section.

(C) *Special retrospective payment provision for new hospitals.* For purposes of this paragraph, a new hospital is a hospital that qualifies for the Medicare exemption from the rate of increase ceiling applicable to new hospitals which are PPS-exempt psychiatric hospitals. Any new hospital that becomes a higher volume hospital, in addition to qualifying prospectively as a higher volume hospital for purposes of paragraph (a)(2)(v)(B) of this section, may additionally, upon application to the

Director, OCHAMPUS, receive a retrospective adjustment. The retrospective adjustment shall be calculated so that the hospital receives the same government share payments it would have received had it been designated a higher volume hospital for the federal fiscal year in which it first had 25 or more CHAMPUS discharges and the preceding fiscal year (if it had any CHAMPUS patients during the preceding fiscal year). Such new hospitals must agree not to bill CHAMPUS beneficiaries for any additional costs beyond that determined initially.

(D) *Review of classification.* Any hospital or unit which OCHAMPUS erroneously fails to classify as a higher volume hospital may apply to the Director, OCHAMPUS, or a designee, for such a classification. The hospital shall have the burden of proof.

(vi) *Payment for hospital based professional services.* Lower volume hospitals and units may not bill separately for hospital based professional mental health services; payment for those services is included in the per diems. Higher volume hospitals and units, whether they billed CHAMPUS separately for hospital based professional mental health services or included those services in the hospital's billing to CHAMPUS, shall continue the practice in effect during the period July 1, 1987 to May 31, 1988 (or other data base period used for calculating the hospital's or unit's per diem), except that any such hospital or unit may change its prior practice (and obtain an appropriate revision in its per diem) by providing to OCHAMPUS notice in accordance with procedures established by the Director, OCHAMPUS, or a designee.

(vii) *Leave days.* CHAMPUS shall not pay for days where the patient is absent on leave from the specialty psychiatric hospital or unit. The hospital must identify these days when claiming reimbursement. CHAMPUS shall not count a patient's leave of absence as a discharge in determining whether a facility should be classified as a higher volume hospital pursuant to paragraph (a)(2)(v) of this section.

(viii) *Exemptions from the CHAMPUS mental health per diem payment system.* The following providers and procedures

are exempt from the CHAMPUS mental health per diem payment system.

(A) *Non-specialty providers.* Providers of inpatient care which are not either psychiatric hospitals or psychiatric specialty units as described in paragraph (a)(2)(i)(A) of this section are exempt from the CHAMPUS mental health per diem payment system. Such providers should refer to paragraph (a)(1) of this section for provisions pertinent to the CHAMPUS DRG-based payment system.

(B) *DRG 424.* Admissions for operating room procedures involving a principal diagnosis of mental illness (services which group into DRG 424) are exempt from the per diem payment system. They will be reimbursed pursuant to the provisions of paragraph (a)(3) of this section.

(C) *Non-mental health services.* Admissions for non-mental health procedures in specialty psychiatric hospitals and units are exempt from the per diem payment system. They will be reimbursed pursuant to the provisions of paragraph (a)(3) of this section.

(D) *Sole community hospitals.* Any hospital which has qualified for special treatment under the Medicare prospective payment system as a sole community hospital and has not given up that classification is exempt.

(E) *Hospitals outside the U.S.* A hospital is exempt if it is not located in one of the 50 states, the District of Columbia or Puerto Rico.

(ix) *Per diem payment for psychiatric and substance use disorder rehabilitation partial hospitalization services—*(A) *In general.* Psychiatric and substance use disorder rehabilitation partial hospitalization services authorized by § 199.4 (b)(10) and (e)(4) and provided by institutional providers authorized under § 199.6 (b)(4)(xii) and (b)(4)(xiv), are reimbursed on the basis of prospectively determined, all-inclusive per diem rates. The per diem payment amount must be accepted as payment in full for all institutional services provided, including board, routine nursing services, ancillary services (includes art, music, dance, occupational and other such therapies), psychological testing and assessments, overhead and

any other services for which the customary practice among similar providers is included as part of the institutional charges.

(B) *Services which may be billed separately.* The following services are not considered as included within the per diem payment amount and may be separately billed when provided by an authorized independent professional provider:

(1) *Psychotherapy sessions not included.* Professional services provided by an authorized professional provider (who is not employed by or under contract with the partial hospitalization program) for purposes of providing clinical patient care to a patient in the partial hospitalization program are not included in the per diem rate. They may be separately billed. Professional mental health benefits are limited to a maximum of one session (60 minutes individual, 90 minutes family, etc.) per authorized treatment day not to exceed five sessions in any calendar week.

(2) *Non-mental health related medical services.* Those services not normally included in the evaluation and assessment of a partial hospitalization program, non-mental health related medical services, may be separately billed when provided by an authorized independent professional provider. This includes ambulance services when medically necessary for emergency transport.

(C) *Per diem rate.* For any full day partial hospitalization program (minimum of 6 hours), the maximum per diem payment amount is 40 percent of the average inpatient per diem amount per case established under the CHAMPUS mental health per diem reimbursement system for both high and low volume psychiatric hospitals and units (as defined in § 199.14(a)(2)) for the fiscal year. A partial hospitalization program of less than 6 hours (with a minimum of three hours) will be paid a per diem rate of 75 percent of the rate for a full-day program.

(D) *Other requirements.* No payment is due for leave days, for days in which treatment is not provided, or for days in which the duration of the program services was less than three hours.

(3) *Billed charges and set rates.* The allowable costs for authorized care in all

hospitals not subject to the CHAMPUS DRG-based payment system or the CHAMPUS mental health per diem payment system shall be determined on the basis of billed charges or set rates. Under this procedure the allowable costs may not exceed the lower of:

(i) The actual charge for such service made to the general public; or

(ii) The allowed charge applicable to the policyholders or subscribers of the CHAMPUS fiscal intermediary for comparable services under comparable circumstances, when extended to CHAMPUS beneficiaries by consent or agreement; or

(iii) The allowed charge applicable to the citizens of the community or state as established by local or state regulatory authority, excluding title XIX of the Social Security Act or other welfare program, when extended to CHAMPUS beneficiaries by consent or agreement.

(4) *CHAMPUS discount rates.* The CHAMPUS-determined allowable cost for authorized care in any hospital may be based on discount rates established under paragraph (i) of this section.

(b) *Skilled Nursing Facilities (SNFs).* The CHAMPUS-determined allowable cost for reimbursement of a SNF shall be determined on the same basis as for hospitals which are not subject to the CHAMPUS DRG-based payment system.

(c) *Reimbursement for Other Than Hospitals and SNFs.* The Director, OCHAMPUS, or a designee, shall establish such other methods of determining allowable cost or charge reimbursement for those institutions, other than hospitals and SNFs, as may be required.

(d) *Payment of institutional facility costs for ambulatory surgery.* (1) *In general.* CHAMPUS pays institutional facility costs for ambulatory surgery on the basis of prospectively determined amounts, as provided in this paragraph. This payment method is similar to that used by the Medicare program for ambulatory surgery. This paragraph applies to payment for institutional charges for ambulatory surgery provided in hospitals and freestanding ambulatory surgical centers. It does not apply to professional services. A list of ambulatory surgery procedures

subject to the payment method set forth in this paragraph shall be published periodically by the Director, OCHAMPUS. Payment to freestanding ambulatory surgery centers is limited to these procedures.

(2) *Payment in full.* The payment provided for under this paragraph is the payment in full for services covered by this paragraph. Facilities may not charge beneficiaries for amounts, if any, in excess of the payment amounts determined pursuant to this paragraph.

(3) *Calculation of standard payment rates.* Standard payment rates are calculated for groups of procedures under the following steps:

(i) *Step 1: Calculate a median standardized cost for each procedure.* For each ambulatory surgery procedure, a median standardized cost will be calculated on the basis of all ambulatory surgery charges nationally under CHAMPUS during a recent one-year base period. The steps in this calculation include standardizing for local labor costs by reference to the same wage index and labor/non-labor-related cost ratio as applies to the facility under Medicare, applying a cost-to-charge ratio, calculating a median cost for each procedure, and updating to the year for which the payment rates will be in effect by the Consumer Price Index-Urban. In applying a cost-to-charge ratio, the Medicare cost-to-charge ratio for freestanding ambulatory surgery centers (FASCs) will be used for all charges from FASCs, and the Medicare cost-to-charge ratio for hospital outpatient settings will be used for all charges from hospitals.

(ii) *Step 2: Grouping procedures.* Procedures will then be placed into one of ten groups by their median per procedure cost, starting with \$0 to \$299 for group 1 and ending with \$1000 to \$1299 for group 9 and \$1300 and above for group 10, with groups 2 through 8 set on the basis of \$100 fixed intervals.

(iii) *Step 3: Adjustments to groups.* The Director, OCHAMPUS may make adjustments to the groupings resulting from step 2 to account for any ambulatory surgery procedures for which there were insufficient data to allow a grouping or to correct for any anomalies resulting from data or statistical factors or other special factors that

fairness requires be specially recognized. In making any such adjustments, the Director may take into consideration the placing of particular procedures in the ambulatory surgery groups under Medicare.

(iv) *Step 4: Standard payment amount per group.* The standard payment amount per group will be the volume weighted median per procedure cost for the procedures in that group.

(v) *Step 5: Actual payments.* Actual payment for a procedure will be the standard payment amount for the group which covers that procedure, adjusted for local labor costs by reference to the same labor/non-labor-related cost ratio and hospital wage index as used for ambulatory surgery centers by Medicare.

(4) *Multiple procedures.* In cases in which authorized multiple procedures are performed during the same operative session, payment shall be based on 100 percent of the payment amount for the procedure with the highest ambulatory surgery payment amount, plus, for each other procedure performed during the session, 50 percent of its payment amount.

(5) *Annual updates.* The standard payment amounts will be updated annually by the same update factor as is used in the Medicare annual updates for ambulatory surgery center payments.

(6) *Recalculation of rates.* The Director, OCHAMPUS may periodically recalculate standard payment rates for ambulatory surgery using the steps set forth in paragraph (d)(3) of this section.

(e) *Reimbursement of Birthing Centers.*

(1) Reimbursement for maternity care and childbirth services furnished by an authorized birthing center shall be limited to the lower of the CHAMPUS established all-inclusive rate or the center's most-favored all-inclusive rate.

(2) The all-inclusive rate shall include the following to the extent that they are usually associated with a normal pregnancy and childbirth: Laboratory studies, prenatal management, labor management, delivery, postpartum management, newborn care, birth assistant, certified nurse-midwife

professional services, physician professional services, and the use of the facility.

(3) The CHAMPUS established all-inclusive rate is equal to the sum of the CHAMPUS area prevailing professional charge for total obstetrical care for a normal pregnancy and delivery and the sum of the average CHAMPUS allowable institutional charges for supplies, laboratory, and delivery room for a hospital inpatient normal delivery. The CHAMPUS established all-inclusive rate areas will coincide with those established for prevailing professional charges and will be updated concurrently with the CHAMPUS area prevailing professional charge database.

(4) Extraordinary maternity care services, when otherwise authorized, may be reimbursed at the lesser of the billed charge or the CHAMPUS allowable charge.

(5) Reimbursement for an incomplete course of care will be limited to claims for professional services and tests where the beneficiary has been screened but rejected for admission into the birthing center program, or where the woman has been admitted but is discharged from the birthing center program prior to delivery, adjudicated as individual professional services and items.

(6) The beneficiary's share of the total reimbursement to a birthing center is limited to the cost-share amount plus the amount billed for non-covered services and supplies.

(f) *Reimbursement of Residential Treatment Centers.* The CHAMPUS rate is the per diem rate that CHAMPUS will authorize for all mental health services rendered to a patient and the patient's family as part of the total treatment plan submitted by a CHAMPUS-approved RTC, and approved by the Director, OCHAMPUS, or designee.

(1) The all-inclusive per diem rate for RTCs operating or participating in CHAMPUS during the base period of July 1, 1987, through June 30, 1988, will be the lowest of the following conditions:

(i) The CHAMPUS rate paid to the RTC for all-inclusive services as of June 30, 1988, adjusted by the Consumer Price Index—Urban (CPI-U) for medical care as determined applicable by

the Director, OCHAMPUS, or designee; or

(ii) The per diem rate accepted by the RTC from any other agency or organization (public or private) that is high enough to cover one-third of the total patient days during the 12-month period ending June 30, 1988, adjusted by the CPI-U; or

NOTE: The per diem rate accepted by the RTC from any other agency or organization includes the rates accepted from entities such as Government contractors in CHAMPUS demonstration projects.

(iii) An OCHAMPUS determined capped per diem amount not to exceed the 80th percentile of all established CHAMPUS RTC rates nationally, weighted by total CHAMPUS days provided at each rate during the base period discussed in paragraph (f)(1) of this section.

(2) The all-inclusive per diem rates for RTCs which began operation after June 30, 1988, or began operation before July 1, 1988, but had less than 6 months of operation by June 30, 1988, will be calculated based on the lower of the per diem rate accepted by the RTC that is high enough to cover one-third of the total patient days during its first 6 to 12 consecutive months of operation, or the CHAMPUS determined capped amount. Rates for RTCs beginning operation prior to July 1, 1988, will be adjusted by an appropriate CPI-U inflation factor for the period ending June 30, 1988. A period of less than 12 months will be used only when the RTC has been in operation for less than 12 months. Once a full 12 months is available, the rate will be recalculated.

(3) For care on or after April 6, 1995, the per diem amount may not exceed a cap of the 70th percentile of all established Federal fiscal year 1994 RTC rates nationally, weighted by total CHAMPUS days provided at each rate during the first half of Federal fiscal year 1994, and updated to FY95. For Federal fiscal years 1996 and 1997, the cap shall remain unchanged. For Federal fiscal years after fiscal year 1997, the cap shall be adjusted by the Medicare update factor for hospitals and units exempt from the Medicare prospective payment system.

(4) All educational costs, whether they include routine education or special education costs, are excluded from reimbursement except when appropriate education is not available from, or not payable by, a cognizant public entity.

(i) The RTC shall exclude educational costs from its daily costs.

(ii) The RTC's accounting system must be adequate to assure CHAMPUS is not billed for educational costs.

(iii) The RTC may request payment of educational costs on an individual case basis from the Director, OCHAMPUS, or designee, when appropriate education is not available from, or not payable by, a cognizant public entity. To qualify for reimbursement of educational costs in individual cases, the RTC shall comply with the application procedures established by the Director, OCHAMPUS, or designee, including, but not limited to, the following:

(A) As part of its admission procedures, the RTC must counsel and assist the beneficiary and the beneficiary's family in the necessary procedures for assuring their rights to a free and appropriate public education.

(B) The RTC must document any reasons why an individual beneficiary cannot attend public educational facilities and, in such a case, why alternative educational arrangements have not been provided by the cognizant public entity.

(C) If reimbursement of educational costs is approved for an individual beneficiary by the Director, OCHAMPUS, or designee, such educational costs shall be shown separately from the RTC's daily costs on the CHAMPUS claim. The amount paid shall not exceed the RTC's most-favorable rate to any other patient, agency, or organization for special or general educational services whichever is appropriate.

(D) If the RTC fails to request CHAMPUS approval of the educational costs on an individual case, the RTC agrees not to bill the beneficiary or the beneficiary's family for any amounts disallowed by CHAMPUS. Requests for payment of educational costs must be referred to the Director, OCHAMPUS, or designee for review and a determina-

tion of the applicability of CHAMPUS benefits.

(5) Subject to the applicable RTC cap, adjustments to the RTC rates may be made annually.

(i) For Federal fiscal years through 1995, the adjustment shall be based on the Consumer Price Index-Urban (CPI-U) for medical care as determined applicable by the Director, OCHAMPUS.

(ii) For purposes of rates for Federal fiscal years 1996 and 1997:

(A) For any RTC whose 1995 rate was at or above the thirtieth percentile of all established Federal fiscal year 1995 RTC rates normally, weighted by total CHAMPUS days provided at each rate during the first half of Federal fiscal year 1994, that rate shall remain in effect, with no additional update, throughout fiscal years 1996 and 1997; and

(B) For any RTC whose 1995 rate was below the 30th percentile level determined under paragraph (f)(5)(ii)(A) of this section, the rate shall be adjusted by the lesser of: the CPI-U for medical care, or the amount that brings the rate up to that 30th percentile level.

(iii) For subsequent Federal fiscal years after fiscal year 1997, RTC rates shall be updated by the Medicare update factor for hospitals and units exempt from the Medicare prospective payment system.

(6) For care provided on or after July 1, 1995, CHAMPUS will not pay for days in which the patient is absent on leave from the RTC. The RTC must identify these days when claiming reimbursement.

(g) *Reimbursement of hospice programs.* Hospice care will be reimbursed at one of four predetermined national CHAMPUS rates based on the type and intensity of services furnished to the beneficiary. A single rate is applicable for each day of care except for continuous home care where payment is based on the number of hours of care furnished during a 24-hour period. These rates will be adjusted for regional differences in wages using wage indices for hospice care.

(1) *National hospice rates.* CHAMPUS will use the national hospice rates for reimbursement of each of the following

levels of care provided by or under arrangement with a CHAMPUS approved hospice program:

(i) *Routine home care.* The hospice will be paid the routine home care rate for each day the patient is at home, under the care of the hospice, and not receiving continuous home care. This rate is paid without regard to the volume or intensity of routine home care services provided on any given day.

(ii) *Continuous home care.* The hospice will be paid the continuous home care rate when continuous home care is provided. The continuous home care rate is divided by 24 hours in order to arrive at an hourly rate.

(A) A minimum of 8 hours of care must be provided within a 24-hour day starting and ending at midnight.

(B) More than half of the total actual hours being billed for each 24-hour period must be provided by either a registered or licensed practical nurse.

(C) Homemaker and home health aide services may be provided to supplement the nursing care to enable the beneficiary to remain at home.

(D) For every hour or part of an hour of continuous care furnished, the hourly rate will be reimbursed to the hospice up to 24 hours a day.

(iii) *Inpatient respite care.* The hospice will be paid at the inpatient respite care rate for each day on which the beneficiary is in an approved inpatient facility and is receiving respite care.

(A) Payment for respite care may be made for a maximum of 5 days at a time, including the date of admission but not counting the date of discharge. The necessity and frequency of respite care will be determined by the hospice interdisciplinary group with input from the patient's attending physician and the hospice's medical director.

(B) Payment for the sixth and any subsequent days is to be made at the routine home care rate.

(iv) *General inpatient care.* Payment at the inpatient rate will be made when general inpatient care is provided for pain control or acute or chronic symptom management which cannot be managed in other settings. None of the other fixed payment rates (i.e., routine home care) will be applicable for a day on which the patient receives general

inpatient care except on the date of discharge.

(v) *Date of discharge.* For the day of discharge from an inpatient unit, the appropriate home care rate is to be paid unless the patient dies as an inpatient. When the patient is discharged deceased, the inpatient rate (general or respite) is to be paid for the discharge date.

(2) *Use of Medicare rates.* CHAMPUS will use the most current Medicare rates to reimburse hospice programs for services provided to CHAMPUS beneficiaries. It is CHAMPUS' intent to adopt changes in the Medicare reimbursement methodology as they occur; e.g., Medicare's adoption of an updated, more accurate wage index.

(3) *Physician reimbursement.* Payment is dependent on the physician's relationship with both the beneficiary and the hospice program.

(i) *Physicians employed by, or contracted with, the hospice.* (A) Administrative and supervisory activities (i.e., establishment, review and updating of plans of care, supervising care and services, and establishing governing policies) are included in the adjusted national payment rate.

(B) Direct patient care services are paid in addition to the adjusted national payment rate.

(1) Physician services will be reimbursed an amount equivalent to 100 percent of the CHAMPUS' allowable charge; i.e., there will be no cost-sharing and/or deductibles for hospice physician services.

(2) Physician payments will be counted toward the hospice cap limitation.

(ii) *Independent attending physician.* Patient care services rendered by an independent attending physician (a physician who is not considered employed by or under contract with the hospice) are not part of the hospice benefit.

(A) Attending physician may bill in his/her own right.

(B) Services will be subject to the appropriate allowable charge methodology.

(C) Reimbursement is not counted toward the hospice cap limitation.

(D) Services provided by an independent attending physician must be coordinated with any direct care services provided by hospice physicians.

(E) The hospice must notify the CHAMPUS contractor of the name of the physician whenever the attending physician is not a hospice employee.

(iii) *Voluntary physician services.* No payment will be allowed for physician services furnished voluntarily (both physicians employed by, and under contract with, the hospice and independent attending physicians). Physicians may not discriminate against CHAMPUS beneficiaries; e.g., designate all services rendered to non-CHAMPUS patients as volunteer and at the same time bill for CHAMPUS patients.

(4) *Unrelated medical treatment.* Any covered CHAMPUS services not related to the treatment of the terminal condition for which hospice care was elected will be paid in accordance with standard reimbursement methodologies; i.e., payment for these services will be subject to standard deductible and cost-sharing provisions under the CHAMPUS. A determination must be made whether or not services provided are related to the individual's terminal illness. Many illnesses may occur when an individual is terminally ill which are brought on by the underlying condition of the ill patient. For example, it is not unusual for a terminally ill patient to develop pneumonia or some other illness as a result of his or her weakened condition. Similarly, the setting of bones after fractures occur in a bone cancer patient would be treatment of a related condition. Thus, if the treatment or control of an upper respiratory tract infection is due to the weakened state of the terminal patient, it will be considered a related condition, and as such, will be included in the hospice daily rates.

(5) *Cap amount.* Each CHAMPUS-approved hospice program will be subject to a cap on aggregate CHAMPUS payments from November 1 through October 31 of each year, hereafter known as "the cap period."

(i) The cap amount will be adjusted annually by the percent of increase or decrease in the medical expenditure

category of the Consumer Price Index for all urban consumers (CPI-U).

(ii) The aggregate cap amount (i.e., the statutory cap amount times the number of CHAMPUS beneficiaries electing hospice care during the cap period) will be compared with total actual CHAMPUS payments made during the same cap period.

(iii) Payments in excess of the cap amount must be refunded by the hospice program. The adjusted cap amount will be obtained from the Health Care Financing Administration (HCFA) prior to the end of each cap period.

(iv) Calculation of the cap amount for a hospice which has not participated in the program for an entire cap year (November 1 through October 31) will be based on a period of at least 12 months but no more than 23 months. For example, the first cap period for a hospice entering the program on October 1, 1994, would run from October 1, 1994 through October 31, 1995. Similarly, the first cap period for hospice providers entering the program after November 1, 1993 but before November 1, 1994 would end October 31, 1995.

(6) *Inpatient limitation.* During the 12-month period beginning November 1 of each year and ending October 31, the aggregate number of inpatient days, both for general inpatient care and respite care, may not exceed 20 percent of the aggregate total number of days of hospice care provided to all CHAMPUS beneficiaries during the same period.

(i) If the number of days of inpatient care furnished to CHAMPUS beneficiaries exceeds 20 percent of the total days of hospice care to CHAMPUS beneficiaries, the total payment for inpatient care is determined follows:

(A) Calculate the ratio of the maximum number of allowable inpatient days of the actual number of inpatient care days furnished by the hospice to Medicare patients.

(B) Multiply this ratio by the total reimbursement for inpatient care made by the CHAMPUS contractor.

(C) Multiply the number of actual inpatient days in excess of the limitation by the routine home care rate.

(D) Add the amounts calculated in paragraphs (g)(6)(i) (B) and (C) of this section.

(ii) Compare the total payment for inpatient care calculated in paragraph (g)(6)(i)(D) of this section to actual payments made to the hospice for inpatient care during the cap period.

(iii) Payments in excess of the inpatient limitation must be refunded by the hospice program.

(7) *Hospice reporting responsibilities.* The hospice is responsible for reporting the following data within 30 days after the end of the cap period:

(i) Total reimbursement received and receivable for services furnished CHAMPUS beneficiaries during the cap period, including physician's services not of an administrative or general supervisory nature.

(ii) Total reimbursement received and receivable for general inpatient care and inpatient respite care furnished to CHAMPUS beneficiaries during the cap period.

(iii) Total number of inpatient days furnished to CHAMPUS hospice patients (both general inpatient and inpatient respite days) during the cap period.

(iv) Total number of CHAMPUS hospice days (both inpatient and home care) during the cap period.

(v) Total number of beneficiaries electing hospice care. The following rules must be adhered to by the hospice in determining the number of CHAMPUS beneficiaries who have elected hospice care during the period:

(A) The beneficiary must not have been counted previously in either another hospice's cap or another reporting year.

(B) The beneficiary must file an initial election statement during the period beginning September 28 of the previous cap year through September 27 of the current cap year in order to be counted as an electing CHAMPUS beneficiary during the current cap year.

(C) Once a beneficiary has been included in the calculation of a hospice cap amount, he or she may not be included in the cap for that hospice again, even if the number of covered days in a subsequent reporting period exceeds that of the period where the beneficiary was included.

(D) There will be proportional application of the cap amount when a beneficiary elects to receive hospice bene-

fits from two or more different CHAMPUS-certified hospices. A calculation must be made to determine the percentage of the patient's length of stay in each hospice relative to the total length of hospice stay.

(8) *Reconsideration of cap amount and inpatient limit.* A hospice dissatisfied with the contractor's calculation and application of its cap amount and/or inpatient limitation may request and obtain a contractor review if the amount of program reimbursement in controversy—with respect to matters which the hospice has a right to review—is at least \$1000. The administrative review by the contractor of the calculation and application of the cap amount and inpatient limitation is the only administrative review available. These calculations are not subject to the appeal procedures set forth in § 199.10. The methods and standards for calculation of the hospice payment rates established by CHAMPUS, as well as questions as to the validity of the applicable law, regulations or CHAMPUS decisions, are not subject to administrative review, including the appeal procedures of § 199.10.

(9) *Beneficiary cost-sharing.* There are no deductibles under the CHAMPUS hospice benefit. CHAMPUS pays the full cost of all covered services for the terminal illness, except for small cost-share amounts which *may be* collected by the individual hospice for outpatient drugs and biologicals and inpatient respite care.

(i) The patient is responsible for 5 percent of the cost of outpatient drugs or \$5 toward each prescription, whichever is less. Additionally, the cost of prescription drugs (drugs or biologicals) may not exceed that which a prudent buyer would pay in similar circumstances; that is, a buyer who refuses to pay more than the going price for an item or service and also seeks to economize by minimizing costs.

(ii) For inpatient respite care, the cost-share for each respite care day is equal to 5 percent of the amount CHAMPUS has estimated to be the cost of respite care, after adjusting the national rate for local wage differences.

(iii) The amount of the individual cost-share liability for respite care during a hospice cost-share period may

not exceed the Medicare inpatient hospital deductible applicable for the year in which the hospice cost-share period began. The individual hospice cost-share period begins on the first day an election is in effect for the beneficiary and ends with the close of the first period of 14 consecutive days on each of which an election is not in effect for the beneficiary.

(h) *Reimbursement of Individual Health-Care Professionals and Other Non-Institutional Health-Care Providers.* The CHAMPUS-determined reasonable charge (the amount allowed by CHAMPUS) for the services of an individual health-care professional or other non-institutional health-care provider (even if employed by or under contract to an institutional provider) shall be determined by one of the following methodologies, that is, whichever is in effect in the specific geographic location at the time covered services and supplies are provided to a CHAMPUS beneficiary.

(1) *Allowable charge method*—(i) *Introduction*—(A) *In general.* The allowable charge method is the preferred and primary method for reimbursement of individual health care professionals and other non-institutional health care providers (covered by 10 U.S.C. 1079(h)(1)). The allowable charge for authorized care shall be the lower of the billed charge or the local CHAMPUS Maximum Allowable Charge (CMAC).

(B) *CHAMPUS Maximum Allowable Charge.* Beginning in calendar year 1992, prevailing charge levels and appropriate charge levels will be calculated on a national level. There will then be calculated a national CHAMPUS Maximum Allowable Charge (CMAC) level for each procedure, which shall be the lesser of the national prevailing charge level or the national appropriate charge level. The national CMAC will then be adjusted for localities in accordance with paragraph (g)(1)(iv) of this section.

(C) *Limits on balance billing by non-participating providers.* Nonparticipating providers may not balance bill a beneficiary an amount which exceeds the applicable balance billing limit. The balance billing limit shall be the same percentage as the Medicare limiting charge percentage for nonparticipating

physicians. The balance billing limit may be waived by the Director, OCHAMPUS on a case-by-case basis if requested by the CHAMPUS beneficiary (or sponsor) involved. A decision by the Director to waive or not waive the limit in any particular case is not subject to the appeal and hearing procedures of § 199.10.

(D) *Special rule for TRICARE Prime Enrollees.* In the case of a TRICARE Prime enrollee (see § 199.17) who receives authorized care from a non-participating provider, the CHAMPUS determined reasonable charge will be the CMAC level as established in paragraph (h)(1)(i)(B) of this section plus any balance billing amount up to the balance billing limit as referred to in paragraph (h)(1)(i)(C) of this section. The authorization for such care shall be pursuant to the procedures established by the Director, OCHAMPUS (also referred to as the TRICARE Support Office).

(ii) *Prevailing charge level.* (A) Beginning in calendar year 1992, the prevailing charge level shall be calculated on a national basis.

(B) The national prevailing charge level referred to in paragraph (g)(1)(ii)(A) of this section is the level that does not exceed the amount equivalent to the 80th percentile of billed charges made for similar services during the base period. The 80th percentile of charges shall be determined on the basis of statistical data and methodology acceptable to the Director, OCHAMPUS (or a designee).

(C) For purposes of paragraph (g)(1)(ii)(B) of this section, the base period shall be a period of 12 calendar months and shall be adjusted once a year, unless the Director, OCHAMPUS, determines that a different period for adjustment is appropriate and publishes a notice to that effect in the FEDERAL REGISTER.

(iii) *Appropriate charge level.* Beginning in calendar year 1992, the appropriate charge level shall be calculated on a national basis. The appropriate charge level for each procedure is the product of the two-step process set forth in paragraphs (g)(1)(iii) (A) and (B) of this section. This process involves comparing the prior year's

CMAC with the fully phased in Medicare fee. For years after the Medicare fee has been fully phased in, the comparison shall be to the current year Medicare fee. For any particular procedure for which comparable Medicare fee and CHAMPUS data are unavailable, but for which alternative data are available that the Director, OCHAMPUS (or designee) determines provide a reasonable approximation of relative value or price, the comparison may be based on such alternative data.

(A) *Step 1: Procedures classified.* All procedures are classified into one of three categories, as follows:

(1) *Overpriced procedures.* These are the procedures for which the prior year's national CMAC exceeds the Medicare fee.

(2) *Other procedures.* These are procedures subject to the allowable charge method that are not included in either the overpriced procedures group or the underpriced procedures group.

(3) *Underpriced procedures.* These are the procedures for which the prior year's national CMAC is less than the Medicare fee.

(B) *Step 2: Calculating appropriate charge levels.* For each year, appropriate charge levels will be calculated by adjusting the prior year's CMAC as follows:

(1) For overpriced procedures, the appropriate charge level for each procedure shall be the prior year's CMAC, reduced by the lesser of: the percentage by which it exceeds the Medicare fee or fifteen percent.

(2) For other procedures, the appropriate charge level for each procedure shall be the same as the prior year's CMAC.

(3) For underpriced procedures, the appropriate charge level for each procedure shall be the prior year's CMAC, increased by the lesser of: the percentage by which it is exceeded by the Medicare fee or the Medicare Economic Index.

(C) *Special rule for cases in which the CHAMPUS appropriate charge was prematurely reduced.* In any case in which a recalculation of the Medicare fee results in a Medicare rate higher than the CHAMPUS appropriate charge for a procedure that had been considered an overpriced procedure, the reduction in

the CHAMPUS appropriate charge shall be restored up to the level of the recalculated Medicare rate.

(iv) *Calculating CHAMPUS Maximum Allowable Charge levels for localities.*

(A) *In general.* The national CHAMPUS Maximum Allowable Charge level for each procedure will be adjusted for localities using the same (or similar) geographical areas and the same geographic adjustment factors as are used for determining allowable charges under Medicare.

(B) *Special locality-based phase-in provision.*

(1) *In general.* Beginning with the recalculation of CMACS for calendar year 1993, the CMAC in a locality will not be less than 72.25 percent of the maximum charge level in effect for that locality on December 31, 1991. For recalculations of CMACs for calendar years after 1993, the CMAC in a locality will not be less than 85 percent of the CMAC in effect for that locality at the end of the prior calendar year.

(2) *Exception.* The special locality-based phase-in provision established by paragraph (g)(1)(iv)(B)(1) of this section shall not be applicable in the case of any procedure code for which there were not CHAMPUS claims in the locality accounting for at least 50 services.

(C) *Special locality-based waivers of reductions to assure adequate access to care.* Beginning with the recalculation of CMACs for calendar year 1993, in the case of any procedure classified as an overpriced procedure pursuant to paragraph (g)(1)(iii)(A)(1) of this section, a reduction in the CMAC in a locality below the level in effect at the end of the previous calendar year that would otherwise occur pursuant to paragraphs (g)(1)(iii) and (g)(1)(iv) of this section may be waived pursuant to paragraph (g)(1)(iii)(C) of this section.

(1) *Waiver based on balanced billing rates.* Except as provided in paragraph (g)(1)(iv)(C)(2) of this section such a reduction will be waived if there has been excessive balance billing in the locality for the procedure involved. For this purpose, the extent of balance billing will be determined based on a review of all services under the procedure code

involved in the prior year (or most recent period for which data are available). If the number of services for which balance billing was not required was less than 60 percent of all services provided, the Director will determine that there was excessive balance billing with respect to that procedure in that locality and will waive the reduction in the CMAC that would otherwise occur. A decision by the Director to waive or not waive the reduction is not subject to the appeal and hearing procedures of § 199.10.

(2) *Exception.* As an exception to the paragraph (g)(1)(iv)(C)(1) of this section, the waiver required by that paragraph shall not be applicable in the case of any procedure code for which there were not CHAMPUS claims in the locality accounting for at least 50 services. A waiver may, however, be granted in such cases pursuant to paragraph (g)(1)(iv)(C)(3) of this section.

(3) *Waiver based on other evidence that adequate access to care would be impaired.* The Director, OCHAMPUS may waive a reduction that would otherwise occur (or restore a reduction that was already taken) if the Director determines that available evidence shows that the reduction would impair adequate access. For this purpose, such evidence may include consideration of the number of providers in the locality who provide the affected services, the number of such providers who are CHAMPUS Participating Providers, the number of CHAMPUS beneficiaries in the area, and other relevant factors. Providers or beneficiaries in a locality may submit to the Director, OCHAMPUS a petition, together with appropriate documentation regarding relevant factors, for a determination that adequate access would be impaired. The Director, OCHAMPUS will consider and respond to all such petitions. Petitions may be filed at any time. Any petition received by the date which is 120 days prior to the implementation of a recalculation of CMACs will be assured of consideration prior to that implementation. The Director, OCHAMPUS may establish procedures for handling petitions. A decision by the Director to waive or not waive a reduction is not subject to the appeal and hearing procedures of § 199.10.

(v) *Special rules for 1991.*

(A) Appropriate charge levels for care provided on or after January 1, 1991, and before the 1992 appropriate levels take effect shall be the same as those in effect on December 31, 1990, except that appropriate charge levels for care provided on or after October 7, 1991, shall be those established pursuant to this paragraph (g)(1)(v) of this section.

(B) Appropriate charge levels will be established for each locality for which a appropriate charge level was in effect immediately prior to October 7, 1991. For each procedure, the appropriate charge level shall be the prevailing charge level in effect immediately prior to October 7, 1991, adjusted as provided in (g)(1)(v)(B) (1) through (3) of this section.

(1) For each overpriced procedure, the level shall be reduced by fifteen percent. For this purpose, overpriced procedures are the procedures determined by the Physician Payment Review Commission to be overvalued pursuant to the process established under the Medicare program, other procedures considered overvalued in the Medicare program (for which Congress directed reductions in Medicare allowable levels for 1991), radiology procedures and pathology procedures.

(2) For each other procedure, the level shall remain unchanged. For this purpose, other procedures are procedures which are not overpriced procedures or primary care procedures.

(3) For each primary care procedure, the level shall be adjusted by the MEI, as the MEI is applied to Medicare prevailing charge levels. For this purpose, primary care procedures include maternity care and delivery services and well baby care services.

(C) For purposes of this paragraph (g)(1)(v), "appropriate charge levels" in effect at any time prior to October 7, 1991 shall mean the lesser of:

(1) The prevailing charge levels then in effect, or

(2) The fiscal year 1988 prevailing charge levels adjusted by the Medicare Economic Index (MEI), as the MEI was applied beginning in the fiscal year 1989.

(vi) *Special transition rule for 1992.*

(A) For purposes of calculating the national appropriate charge levels for

1992, the prior year's appropriate charge level for each service will be considered to be the level that does not exceed the amount equivalent to the 80th percentile of billed charges made for similar services during the base period of July 1, 1986 to June 30, 1987 (determined as under paragraph (g)(1)(ii)(B) of this section), adjusted to calendar year 1991 based on the adjustments made for maximum CHAMPUS allowable charge levels through 1990 and the application of paragraph (g)(1)(v) of this section for 1991.

(B) The adjustment to calendar year 1991 of the product of paragraph (g)(1)(vi)(A) of this section shall be as follows:

(1) For procedures other than those described in paragraph (g)(1)(vi)(B)(2) of this section, the adjustment to 1991 shall be on the same basis as that provided under paragraph (g)(1)(v) of this section.

(2) For any procedure that was considered an overpriced procedure for purposes of the 1991 appropriate charge levels under paragraph (g)(1)(v) of this section for which the resulting 1991 appropriate charge level was less than 150 percent of the Medicare converted relative value unit, the adjustment to 1991 for purposes of the special transition rule for 1992 shall be as if the procedure had been treated under paragraph (g)(1)(v)(B)(2) of this section for purposes of the 1991 appropriate charge level.

(vii) *Adjustments and procedural rules.*

(A) The Director, OCHAMPUS may make adjustments to the appropriate charge levels calculated pursuant to paragraphs (g)(1)(iii) and (g)(1)(v) of this section to correct any anomalies resulting from data or statistical factors, significant differences between Medicare-relevant information and CHAMPUS-relevant considerations or other special factors that fairness requires be specially recognized. However, no such adjustment may result in reducing an appropriate charge level.

(B) The Director, OCHAMPUS will issue procedural instructions for administration of the allowable charge method.

(viii) *Clinical laboratory services.* The allowable charge for clinical diagnostic laboratory test services shall be cal-

culated in the same manner as allowable charges for other individual health care providers are calculated pursuant to paragraphs (g)(1)(i) through (g)(1)(iv) of this section, with the following exceptions and clarifications.

(A) The calculation of national prevailing charge levels, national appropriate charge levels and national CMACs for laboratory service shall begin in calendar year 1993. For purposes of the 1993 calculation, the prior year's national appropriate charge level or national prevailing charge level shall be the level that does not exceed the amount equivalent to the 80th percentile of billed charges made for similar services during the period July 1, 1991, through June 30, 1992 (referred to in this paragraph (g)(1)(viii) of this section as the "base period").

(B) For purposes of comparison to Medicare allowable payment amounts pursuant to paragraph (g)(1)(iii) of this section, the Medicare national laboratory payment limitation amounts shall be used.

(C) For purposes of establishing laboratory service local CMACs pursuant to paragraph (g)(1)(iv) of this section, the adjustment factor shall equal the ratio of the local average charge (standardized for the distribution of clinical laboratory services) to the national average charge for all clinical laboratory services during the base period.

(D) For purposes of a special locality-based phase-in provision similar to that established by paragraph (g)(1)(iv)(B) of this section, the CMAC in a locality will not be less than 85 percent of the maximum charge level in effect for that locality during the base period.

(ix) The allowable charge for physician assistant services other than assistant-at-surgery may not exceed 85 percent of the allowable charge for a comparable service rendered by a physician performing the service in a similar location. For cases in which the physician assistant and the physician perform component services of a procedure other than assistant-at-surgery (e.g., home, office or hospital visit), the combined allowable charge for the procedure may not exceed the allowable charge for the procedure rendered by a

physician alone. The allowable charge for physician assistant services performed as an assistant-at-surgery may not exceed 65 percent of the allowable charge for a physician serving as an assistant surgeon when authorized as CHAMPUS benefits in accordance with the provisions of § 199.4(c)(3)(iii). Physician assistant services must be billed through the employing physician who must be an authorized CHAMPUS provider.

(x) A charge that exceeds the CHAMPUS Maximum Allowable Charge can be determined to be allowable only when unusual circumstances or medical complications justify the higher charge. The allowable charge may not exceed the billed charge under any circumstances.

(2) *All-inclusive rate.* Claims from individual health-care professional providers for services rendered to CHAMPUS beneficiaries residing in an RTC that is either being reimbursed on an all-inclusive per diem rate, or is billing an all-inclusive per diem rate, shall be denied; with the exception of independent health-care professionals providing geographically distant family therapy to a family member residing a minimum of 250 miles from the RTC or covered medical services related to a nonmental health condition rendered outside the RTC. Reimbursement for individual professional services is included in the rate paid the institutional provider.

(3) *Alternative method.* The Director, OCHAMPUS, or a designee, may, subject to the approval of the ASD(HA), establish an alternative method of reimbursement designed to produce reasonable control over health care costs and to ensure a high level of acceptance of the CHAMPUS-determined charge by the individual health-care professionals or other noninstitutional health-care providers furnishing services and supplies to CHAMPUS beneficiaries. Alternative methods may not result in reimbursement greater than the allowable charge method above.

(i) *Reimbursement Under the Military-Civilian Health Services Partnership Program.* The Military-Civilian Health Services Partnership Program, as authorized by section 1096, chapter 55, title 10, provides for the sharing of

staff, equipment, and resources between the civilian and military health care system in order to achieve more effective, efficient, or economical health care for authorized beneficiaries. Military treatment facility commanders, based upon the authority provided by their respective Surgeons General of the military departments, are responsible for entering into individual partnership agreements only when they have determined specifically that use of the Partnership Program is more economical overall to the Government than referring the need for health care services to the civilian community under the normal operation of the CHAMPUS Program. (See paragraph (p) of § 199.1 for general requirements of the Partnership Program.)

(1) *Reimbursement of institutional health care providers.* Reimbursement of institutional health care providers under the Partnership Program shall be on the same basis as non-Partnership providers.

(2) *Reimbursement of individual health-care professionals and other non-institutional health care providers.* Reimbursement of individual health care professionals and other non-institutional health care providers shall be on the same basis as non-Partnership providers as detailed in paragraph (g) of this section.

(j) *Accommodation of Discounts Under Provider Reimbursement Methods.*

(1) *General rule.* The Director, OCHAMPUS (or designee) has authority to reimburse a provider at an amount below the amount usually paid pursuant to this section when, under a program approved by the Director, the provider has agreed to the lower amount.

(2) *Special applications.* The following are examples of applications of the general rule; they are not all inclusive.

(i) In the case and individual health care professionals and other non-institutional providers, if the discounted fee is below the provider's normal billed charge and the prevailing charge level (see paragraph (g) of this section), the discounted fee shall be the provider's actual billed charge and the CHAMPUS allowable charge.

(ii) In the case of institutional providers normally paid on the basis of a pre-set amount (such as DRG-based amount under paragraph (a)(1) of this section or per-diem amount under paragraph (a)(2) of this section), if the discount rate is lower than the pre-set rate, the discounted rate shall be the CHAMPUS-determined allowable cost. This is an exception to the usual rule that the pre-set rate is paid regardless of the institutional provider's billed charges or other factors.

(3) *Procedures.*

(i) This paragraph applies only when both the provider and the Director have agreed to the discounted payment rate. The Director's agreement may be in the context of approval of a program that allows for such discounts.

(ii) The Director of OCHAMPUS may establish uniform terms, conditions and limitations for this payment method in order to avoid administrative complexity.

(k) *Outside the United States.* The Director, OCHAMPUS, or a designee, shall determine the appropriate reimbursement method or methods to be used in the extension of CHAMPUS benefits for otherwise covered medical services or supplies provided by hospitals or other institutional providers, physicians or other individual professional providers, or other providers outside the United States.

(l) *Implementing Instructions.* The Director, OCHAMPUS, or a designee, shall issue CHAMPUS policies, instructions, procedures, and guidelines, as may be necessary to implement the intent of this section.

[55 FR 13266, Apr. 10, 1990, as amended at 55 FR 31180, Aug. 1, 1990; 55 FR 42562, Oct. 22, 1990; 55 FR 43342, Oct. 29, 1990; 56 FR 44006, Sept. 6, 1991; 56 FR 50273, Oct. 4, 1991; 58 FR 35408, July 1, 1993; 58 FR 51239, Oct. 1, 1993; 58 FR 58961, Nov. 5, 1993; 60 FR 6019, Feb. 1, 1995; 60 FR 12437, Mar. 7, 1995; 60 FR 52094, Oct. 5, 1995; 63 FR 7287, Feb. 13, 1998]

§ 199.15 Quality and utilization review peer review organization program.

(a) *General.* (1) *Purpose.* The purpose of this section is to establish rules and procedures for the CHAMPUS Quality and Utilization Review Peer Review Organization program.

(2) *Applicability of program.* All claims submitted for health services under

CHAMPUS are subject to review for quality of care and appropriate utilization. The Director, OCHAMPUS shall establish generally accepted standards, norms and criteria as are necessary for this program of utilization and quality review. These standards, norms and criteria shall include, but not be limited to, need for inpatient admission or inpatient or outpatient service, length of inpatient stay, intensity of care, appropriateness of treatment, and level of institutional care required. The Director, OCHAMPUS may issue implementing instructions, procedures and guidelines for retrospective, concurrent and prospective review.

(3) *Contractor implementation.* The CHAMPUS Quality and Utilization Review Peer Review Organization program may be implemented through contracts administered by the Director, OCHAMPUS. These contractors may include contractors that have exclusive functions in the area of utilization and quality review, fiscal intermediary contractors (which perform these functions along with a broad range of administrative services), and managed care contractors (which perform a range of functions concerning management of the delivery and financing of health care services under CHAMPUS). Regardless of the contractors involved, utilization and quality review activities follow the same standards, rules and procedures set forth in this section, unless otherwise specifically provided in this section or elsewhere in this part.

(4) *Medical issues affected.* The CHAMPUS Quality and Utilization Review Peer Review Organization program is distinguishable in purpose and impact from other activities relating to the administration and management of CHAMPUS in that the Peer Review Organization program is concerned primarily with medical judgments regarding the quality and appropriateness of health care services. Issues regarding such matters as benefit limitations are similar, but, if not determined on the basis of medical judgments, are governed by CHAMPUS rules and procedures other than those provided in this section. (See, for example, § 199.7 regarding claims submission, review and payment.) Based on this purpose, a